



UNITED STATES PATENT AND TRADEMARK OFFICE

69
UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/945,020	08/31/2001	Joe Huang	PV00- 103-US1	1649
24587	7590	06/13/2005	EXAMINER	
ALCATEL USA INTELLECTUAL PROPERTY DEPARTMENT 3400 W. PLANO PARKWAY, MS LEGL2 PLANO, TX 75075			LIN, KELVIN Y	
		ART UNIT		PAPER NUMBER
				2142

DATE MAILED: 06/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/945,020	HUANG ET AL.	
	Examiner	Art Unit	
	Kelvin Lin	2142	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 23 February 2005.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 38-46 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 38-46 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

Detailed Action

Responds to Remark

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 38-46 rejected under 35 U.S.C. 101 because the language of each claim raises a question as to whether the claim is directed merely to an abstract idea that is not tied to a technological art, environment or machine which would result in a practical application producing a concrete, useful, and tangible result to form the basis of statutory subject matter under 35 U.S.C. 101.
3. At claim 38, it listed several multimedia streaming data rate calculations, message reports, servers and clients and is not limited to tangible embodiments. In view of Applicant's disclosure, specification pages 14-17, the medium is not limited to tangible embodiments (e.g. mathematical equation) , instead being defined as including both tangible embodiments (e.g. computer readable equipment) and intangible embodiments (e.g. software). As such, the claim is not limited to statutory subject matter and is therefore non-statutory. One skilled in the art clearly would not know how to use the claimed invention. In view device

medium that will be used for the storage and experiment. Therefore, it is impossible for the specification to teach how to use the invention.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

Claim 38 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claim 38, for claiming the server in response to receiving the feedback report estimating and calculating a data rate. The specification is not enabling to make or use by either a “specific, substantial and credible” asserted utility or a well established utility for deriving a claimed method.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 38-46 are rejected under 35 USC 102(e) as being anticipated by Lin et al., (U.S. Patent No. 6405256).
3. Regarding claim 38, Lin teaches a method of determining a multimedia streaming data rate in a communication network, comprising:
 - sending stream multimedia data at a first data rate between a server and a client using a transport protocol (Lin, col.5, l.7-13)
 - sending a feedback report from the client to the server utilizing the transport protocol, the feedback report at least including information regarding the amount of data received at the client (Lin, col.8, l.35-36);
 - the server in response to receiving the feedback report estimating the amount of data buffered in the network based on the difference between the amount of data sent from the server and the information in the feedback report regarding the amount of data received at the client (Lin, col.8, l.36-37)

- calculating a second data rate from the estimated amount of data buffered in the network (Lin, col.8, l.50-55)
- sending the streaming multimedia data at the second data rate between the server and the client (Lin, fig.4, col.8, l.54-55).

4. Regarding claim 39, Lin further discloses the method as recited in claim 38, further comprising adjusting the estimate amount of data buffered in the network by an uplink delay compensation value (Lin, col.8, l. 54-55).

5. Regarding claim 40, Lin further discloses the method as recited in claim 38, wherein the uplink delay compensation value is determined by the amount of data sent out by the server during a select period of time (Lin, col.8, l.35-36).

6. Regarding claim 41, Lin further discloses the method as recited in claim 39, further comprising calculating an average data receive rate at the client;

- wherein the feedback report includes the average data receive rate (Lin, col.2, l.65-67) ; and
- wherein the uplink delay compensation value is determined at least with the average data receive time (Lin, col.3, l.1-7) .

7. Regarding claim 42, Lin further discloses the method as recited in claim 38, wherein the server sends the streaming multimedia data at a third rate if a feedback report is not received from the client at by predetermined time (Lin, col.3, l.14-16)..

8. Regarding claim 43, Lin further discloses the method as recited in claim 38 further comprising the step of pausing the sending of the streaming multimedia

data from the server if a feedback report is not received from the client by a predetermined time (Lin, col.8, l.10-12, which indicates the request signal not being sent (pausing), if the buffer is empty, i.e. no any multimedia data packet is available).

9. Regarding claim 44, Lin further discloses the method as recited in claim 38, wherein the client sends the feedback report to the server at a fixed time interval (Lin, col.8, l.31-32).
10. Regarding claim 45, Lin further discloses the method as recited in claim 38, wherein the client sends the feedback report to the server at a random interval having a mean based on a predefined distribution function (Lin, col.9, l.42-45).
11. Regarding claim 46, Lin further discloses the method as recited in claim 38, wherein the client sends the feedback report to the server upon the trigger of a certain data packet arrival at the client (Lin, col.8, l.34-37).

Conclusion

Application's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MEPE 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE MONTH shortened statutory period, then the shortened statutory period will expire on the date advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTH from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kelvin Lin whose telephone number is 571-272-3898. The examiner can normally be reached on Flexible 4/9/5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia can be reached on 571-272-3880. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

06/05/05
KYL



KAMINI SHAH
PRIMARY EXAMINER